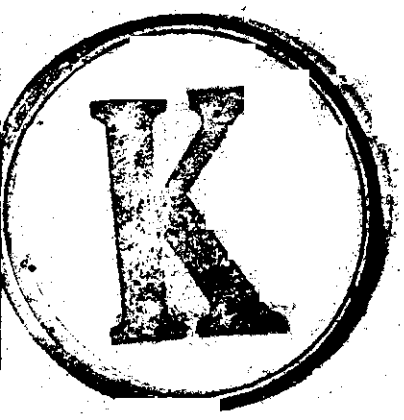

1946.

File No. O. Factories/46

Legal Department

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Subject:— Opinions under the Factories Act, 1934.

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Office of the R.L.A.

In the present case, the junior Inspector of Factories filed a complaint against the occupier of the National Bobbin Works for breach of the provisions of sections 36 and 42 of the Factories Act, 1934. Thereupon the occupier of the said Factory, Mr. Dalal filed a complaint under sub-section (1) of section 7k, 71, charging his contractor, one V.M'Mistry, as the actual offender. It appears that as the summons and warrants issued against the said Mistry could not be served, the case was adjourned from the time to time. Ultimately on 14th May 1946, the Magistrate held that both the accused must be present at the time of hearing and as this was not possible, he adjourned the case "sine die".

The Commissioner of Labour considers that though the decision appears to be correct, it may have far reaching, consequences in as much as an occupier of factory, may, in order to avoid responsibility, file a complaint against any one who may not exist in the factory, and thus make it impossible to serve any summons or warrant on such a person.

The R.L.A. is requested to advise whether the case should be referred to the High Court for revision.

Sub-section (1) of section 71 of the Factories Act, 1934, speaks of circumstances in which the occupier or manager of a factory, who is charged with an offence against the Act, may be discharged from any liability under the Act. If an occupier or manager of a factory is charged with an offence against the Act, under sub-section section (1) of section 71,

shall be entitled upon complaint duly made by him to have other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge. If the commission of offence by such other person is proved, and the occupier or manager proves to the satisfaction of the Court -

(a) that he used the diligence to enforce the execution of the Act, and

(b) that the said other person committed the offence without his knlwledge, consent or connivance,

that other person shall be convicted of the affence and shall be liable to the like fine as if he were the occupier or manager, and the occupier or manager shall be discharged from anu liability under this Act. It is thus evident that at the date appointed for hearing of the charge against the occupier or manager of the factory, the occupier or manager and the other person whom the occupier or manager charges as the actual offender, should both be present. If on the evidence produced, it is proved that the offence is committed by such other person without the knowledge, consent or connivance of such occupier or manager and that such occupier or manager had used due diligence to enforce the execution of the provisions of the Act, the Court may convict such other person and discharge the occupier or manager. That being so, as the summons or warrants could not be served on Mr. Mistry, the Court was justified in adjourning the case "smie die". As the Court has acted in accordance with the provisions of sub-section (1) of section 71 of the Act, the High Court is unlikely to interfere if the matter is taken before it in revision. The only feasible course is to move the Government of India for suitable amendment of section 71(1) of the Act to avoid the contingency referred to by the Commissioner of Labour.

Sd/-
14-11-46

Remembrancer of Legal Affairs.

U.O.R. to P. & S.D. No. 8048 , dated the 15th November 1946.